

ESTATE OF LYMAN (ROMA) GEORGE

IBIA 73-16

Decided March 18, 1974

Petition to reopen.

Petition Granted and Order Determining Heirs Modified in Part.

Indian Probate: Reopening: Waiver of Time Limitation

Petition to reopen filed more than three years after the final determination of heirs will be granted when there is compelling proof that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This matter came before the Board on a petition for reopening of probate filed on March 14, 1972 by the Superintendent of the Nevada Indian Agency at Stewart, Nevada, for and on behalf of Floyd and Lloyd Wyatt, nephews of the decedent. The Administrative Law Judge in his March 22, 1972 transmittal recommended that the petition be granted.

It appears that the decedent died intestate on September 25, 1967, and the original order closing his estate entered July 18, 1968 omitted said nephews from the estate.

A preliminary procedural order on the petition was issued by the Board on April 7, 1972 conditionally reopening the matter. It further appears that the nephews were minors and that at the time decedent's estate was probated were neither notified nor represented by counsel or guardian ad litem.

Pursuant to the dictates of the preliminary procedural order and after reasonable notice a hearing was held by the Administrative Law Judge on December 5, 1972 at which time each of the adverse parties had an opportunity to offer evidence in support of their position on the matter.

A Recommended Order was issued by the Judge on April 5, 1973, a copy of which is attached hereto and made a part hereof. This Order was forwarded to the Board on April 5, 1973.

After full and careful consideration of the complete record and the Recommended Order, the Board concurs in the findings and conclusions of the Judge and adopts the Recommended Order of April 5, 1973 as its own.

A finding is made that this estate should be reopened for the sole purpose of modifying and correcting the Order Determining Heirs, dated July 18, 1968 as follows: (1) to include the petitioners as heirs therein and (2) to reapportion the shares of the heirs in the estate.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the estate of Lyman (Roma) George, IS HEREBY REOPENED and the Order Determining Heirs issued July 18, 1968 IS HEREBY AMENDED, CORRECTED AND MODIFIED to redetermine the decedent's heirs and to reapportion their shares as follows, to wit:

Elsie Sam Fillmore	Sister	55/275
Nina James	Sister	55/275
Ombie George	Brother	55/275
Ronald James, Nephew	(son of prior-deceased sister, Onie George	11/275
Arthur George, Nephew	(do)	11/275
Sandra George, Niece	(daughter of prior- deceased sister, Onie George)	11/275
Rosalie George, Niece	(do)	11/275
Pricilla George, Niece	(do)	11/275
David Wyatt, Nephew	(son of prior-deceased sister, Lisha Wyatt)	5/275
Vernon Wyatt, Nephew	(do)	5/275
Harold Wyatt, Nephew	(do)	5/275
Daniel Wyatt, Nephew	(do)	5/275
Robert Wyatt, Jr., Nephew	(do)	5/275
Lloyd Wyatt, Nephew	(do)	5/275
Floyd Wyatt, Nephew	(do)	5/275
Barbara Wyatt, Niece	(daughter of prior- deceased sister, Lisha Wyatt)	5/275
Doris Wyatt, Niece	(do)	5/275
Kathy Wyatt, Niece	(do)	5/275
Victoria Wyatt, Niece	(do)	5/275

and except as herein modified, the Order of July 18, 1968 is and shall be unchanged and is final as of that date.

This decision is final for the Department.

Done at the city of Arlington, Virginia.

Mitchell J. Sabagh
Administrative Judge

I concur:

David J. McKee
Chief Administrative Judge

WWWVersion

litem, Harold Wyatt. No explanation was ever tendered by the said guardian ad litem why no petition was filed. The failure certainly could not be attributed to lack of notice as the said guardian ad litem was personally served with all documents pertaining to the matter.

However, notwithstanding the failure of the guardian ad litem to file in behalf of his charge or the reasons therefor, it is my recommendation that the minor, Lloyd Wyatt, not be held accountable for his guardian ad litem's failure to file a petition, at least to such an extreme and harsh extent as forever barring any right he might have in the decedent's estate. Accordingly, it is strongly recommended that the inherent authority of the Secretary over matters of this nature be exercised in protecting the said minor's right in his maternal uncle's estate by including him as an heir therein along with the other omitted heir, Floyd Wyatt, in the event the estate is ultimately reopened for the purpose of including the said Floyd Wyatt as an heir in the Lyman (Roma) George estate.

It will be noted from the testimony of the parties in interest in attendance at the hearing that they were fully cognizant of the fact that Lloyd, as in the case of Floyd, was related to the decedent in such degree so as to entitle him to share in the estate along with his other brothers and sisters. Accordingly, they could see no reason why he should not be included as an heir also. As in the case of Floyd Wyatt, it does not appear that any undue hardship would result to the other participating heirs in the estate if Lloyd Wyatt were included if the estate were reopened.

Done at the City of Sacramento, California, and dated this 5th day of April, 1973.

Alexander H. Wilson
Administrative Law Judge